

REMARKS

This Application has been carefully reviewed in light of the Official Action mailed September 6, 2006. Claims 1-26 are pending in this Application. Applicant respectfully requests reconsideration and favorable action in this Application.

Claims 1-3, 9, 11-14, 16-19, and 22-24 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Merchant, et al. Independent Claims 1, 11, 17, and 22 recite in general an ability to generate a re-replicated data entry in a non-failed first or second one of a plurality of nodes for storage at a third one of the plurality of nodes in response to a failure in the first or second one of the plurality of nodes. By contrast, the portions of the Merchant, et al. application cited by the Examiner specifically discuss removal of data from a faulty node. Thus, the Merchant, et al. application does not disclose re-replication of a data entry from a non-failed node for storage in a third node in response to identification of a failed node as provided in the claimed invention. The Examiner readily admits that the Merchant, et al. application fails to disclose this feature. The Examiner attempts to justify the rejection of the claims as being obvious over the Merchant, et al. patent. However, the portions of the Merchant, et al. application cited by the Examiner are concerned with relocating data from a node that is being selected for removal. Thus, the Merchant, et al. application is still directed to removing data only from a non-working node. Second, there is no disclosure in the Merchant, et al. application that suggests the re-replication of data from a first non-failed node for storage in a third node that occurs as a result of a failure in a second node as required in the claimed invention. Therefore, Applicant respectfully submits that Claims 1-3, 9, 11-14, 16-19, and 22-

24 are patentably distinct from the Merchant, et al. application.

Claims 4-8, 10, 15, 20, 21, 25, and 26 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Merchant, et al. in view of Ohran, et al. Independent Claim 1, from which Claims 4-8, and 10 depend; Independent Claim 11, from which Claim 15 depends; Independent Claim 17, from which Claims 20 and 21 depend; and Independent Claim 22, from which Claims 25 and 26 depend have been shown to be patentably distinct from Merchant, et al.. Further, the Ohran, et al. patent does not disclose any additional material combinable with the Merchant, et al. patent that would be material to patentability of these claims. Therefore, Applicant respectfully submits that Claims 4-8, 10, 15, 20, 21, 25, and 26 are patentably distinct from the proposed Merchant, et al. - Ohran, et al. combination.

This Response to Examiner's Final Action is necessary to address the new grounds of rejection and characterization of the cited art in support thereof. This Response to Examiner's Final Action could not have been presented earlier as the Examiner has only now raised the new grounds of rejection and only now provided the current characterization of the cited art.

CONCLUSION

Applicant has made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other apparent reasons, Applicant respectfully requests full allowance of all pending claims.

The Commissioner is hereby authorized to charge any applicable fees or credit any overpayments associated with this Application to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

Respectfully submitted,

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